Lee Hock Mee v Pengarah Jabatan Pengangkutan Jalan Negeri Perak & Ors

HIGH COURT (IPOH) — ORIGINATING SUMMONS NO 21-122 OF 1996
CLEMENT SKINNER JC
3 DECEMBER 1999

Civil Procedure *— Action — Cause of action — Relief against refusal to renew licence — Licence renewed after commencement of action — Whether plaintiff must show that he has present cause of action — Whether court should adjudicate on merits of application*

Civil Procedure *— Locus standi — Declaration against refusal to issue motor vehicle licence — Allegation of traffic offence — Licence renewed after commencement of action — Whether prevented from maintaining action — Whether plaintiff must show that he has present cause of action — Whether court should adjudicate on merits of application*

The plaintiff's application for a renewal of road vehicle licence for his vehicle was refused on the ground that he had an outstanding traffic offence. The plaintiff commenced proceedings against the defendants, seeking, inter alia, a declaration that the refusal of the plaintiff's application for the issuance of a motor vehicle licence on the ground that the plaintiff had committed an alleged traffic offence was null and void and of no legal effect. Five months after the filing of this action, the first defendant renewed the licence of the plaintiff's vehicle.

Held, dismissing the action:

(1) The fact that by the time the application came to be heard the plaintiff had already been granted a licence for his vehicle would not prevent him from maintaining this action. The plaintiff clearly did have a cause of action when he filed the action. It is not necessary for a plaintiff who seeks relief by way of declaratory judgment to show that he has a present cause of action; what he must show is that he is someone with such an interest in the subject matter of the action so as to justify his seeking relief. On the facts as disclosed in the originating summons, the plaintiff, as a person, who, being the registered owner of a vehicle whose application for a road vehicle licence for that vehicle having been refused, had an interest in seeking the reliefs (see p 730B–D).

(2) By the time the originating summons had come up for hearing, the licence for the plaintiff's vehicle had been issued with the result that there was no longer any living issue before the court and, to that extent, the declarations sought by the plaintiff had become academic. By the same token, the plaintiff having received a licence for the vehicle, he could no longer be the recipient of any benefit of any of the declarations sought. In the circumstances, there was no justification in the court going further to adjudicate on the merits of the application (see p 730G–H).

(3) Since the court had found no justification to consider the merits of the plaintiff's application, and since damages were

consequential to liability, the question of damages did not arise (see p 731F–G). A

[**Bahasa Malaysia summary**

Permohonan plaintif untuk memperbaharui lesen pengangkutan jalanraya untuk kenderaan belaiu telah ditolak atas alasan bahawa beliau mempunyai kesalahan jalanraya yang masih belum diselesaikan. Plaintif telah memulakan prosiding terhadap defendan-defendan, memohon, antara lain, satu deklarasi bahawa penolakan permohonan plaintif untuk satu lesen pengangkutan kenderaan dikeluarkan atas alasan bahawa plaintif telah melakukan satu dakwaan kesalahan jalanraya adalah batal dan tidak sah dan tidak mempunyai apa-apa kesan di sisi undang-undang. Lima bulan selepas memfailkan tindakan ini, defendan pertama telah memperbaharui lesen kenderaan plaintif. B C

Diputuskan, menolak tindakan tersebut.: D

(1) Hakikat bahawa menjelang tiba masa permohonan tersebut didengari plaintif telah pun diberikan lesen untuk kenderaan beliau tidak menghalang beliau daripada meneruskan tindakan ini. Plantif dengan jelas mempunyai satu kausa tindakan apabila beliau memfailkan tindakan tersebut. Adalah tidak perlu bagi seorang plaintif yang memohon relif melalui penghakiman deklarasi untuk menunjukkan bahawa beliau mempunyai satu kausa tindakan yang wujud ketika itu; apa yang beliau perlu tunjukkan adalah bahawa beliau seorang yang mempunyai kepentingan di dalam perkara pokok tindakan tersebut untuk menjustifikasikan permohonan relif beliau. Berdasarkan fakta-fakta sebagaimana yang didedahkan di dalam saman pemula, plaintif, sebagai seorang individu, yang mana, merupakan pemilik berdaftar kenderaan yang permohonan untuk lesen kenderaan jalanraya untuk kenderaan tersebut telah ditolak, mempunyai kepentingan untuk memohon relif tersebut (lihat ms 730B–D). E F G

(2) Menjelang tiba masa saman pemula tersebut didengari di dalam perbicaraan, lesen untuk kenderaan plaintif telah dikeluarkan dengan kesan bahawa tiada lagi apa-apa isu berbangkit di mahkamah dan sejauh mana deklarasi-deklarasi yang dipohon oleh plaintif telah menjadi akademik. Dengan sebab yang sama, plaintif dengan menerima lesen kenderaan tersebut, tidak boleh lagi menjadi penerima apa-apa faedah daripada mana-mana deklarasi yang dipohon. Di dalam keadaan ini, tiada justifikasi di dalam mahkamah untuk terus membuat keputusan tentang merit permohonan tersebut (lihat ms 730G–H). H

(3) Memandangkan mahkamah mendapati tiada justifikasi untuk mempertimbangkan merit permohonan plaintif tersebut, dan memandangkan ganti rugi adalah penting kepada liabiliti, persoalan mengenai ganti rugi tidak timbul (lihat ms 731F–G).] I

Notes

For cases on action generally, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 31–129.

For cases on locus standi generally, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 3083–3118.

Cases referred to

Attorney General, Malaysia v Chiow Chiam Guan [1983] 1 MLJ 51 (refd)

Chin Choy & Ors v Collector of Stamp Duties [1979] 1 MLJ 69 (refd)

Goverment of Malaysia v Lim Kit Siang [1988] 2 MLJ 12 (refd)

Menteri Hal Ehwal Dalam Negeri Malaysia & Ors v Karpal Singh [1992] 1 MLJ 147 (refd)

Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Haji Ibrahim & Ors [1988] 3 MLJ 82 (refd)

Tan Sri Haji Othman Saat v Mohamed bin Ismail [1982] 2 MLJ 177 (refd)

Legislation referred to

Federal Constitution art 5(3)

Road Transport Act 1987 s 17(1)(d)

Gurbachan Singh (*Bachan & Kartar*) for the plaintiff.

Raja Rozela bte Raja Toran (*Badlishah bin Hj Ahmad* with her) (Federal Counsels) for the defendants.

Cur Adv Vult

Clement Skinner JC: The plaintiff Lee Hock Mee is the registered owner of two motor vehicles bearing Reg Nos AY 6053 ('the first vehicle') and WAP 5789 ('the second vehicle') respectively, for which he tried to obtain renewals of their annual road vehicle licences in 1996 by payment of what is commonly referred to as their road tax at the offices of the Jabatan Pengangkutan Jalan, Negeri Perak, Ipoh ('the JPJ') but encountered difficulties. Since renewal was sought for each vehicle on different occasions, it will be necessary to describe what happened in respect of each vehicle.

As the validity of the licence of his first vehicle expired on 15 April 1996, the plaintiff went to the JPJ Ipoh, on 11 April 1996, but the JPJ counter clerk refused his application for renewal for the reason that the plaintiff had committed a traffic offence at Kuala Muda, Kedah; the plaintiff was then supplied with a print out from the computer at the JPJ, Ipoh. This showed that on 25 May 1994 the Kuala Muda Police, Traffic Division had issued a traffic summons No E 893149 ('the Kuala Muda traffic summons') against the plaintiff in respect of a vehicle No ACE 2126. The plaintiff then produced evidence, not immediately but on 18 May 1996, that he had settled the Kuala Muda traffic summons by producing a

receipt ('the Kuala Muda receipt') showing that on 15 June 1994, he had paid a sum of RM150 by way of a compound fine to settle the Kuala Muda traffic summons, whereafter the JPJ counter clerk renewed the licence of the first vehicle.

Next, the second vehicle. As the validity of the licence for this vehicle expired on 21 October 1996, the plaintiff went to the JPJ, Ipoh on 14 October 1996 with all relevant documents to apply for renewal of the said licence but was refused such renewal on the ground that he had an outstanding traffic offence which had been committed on 25 May 1994 at Kuala Muda, Kedah. The plaintiff alleges that he then showed the JPJ counter clerk a copy of the Kuala Muda receipt but his application was still not approved. The plaintiff then requested for and was given a computer print out showing that as at 14 October 1996, the Kuala Muda traffic summons was still showing as outstanding on the computer at the JPJ, Ipoh.

Not having succeeded in obtaining a renewal of the licence for his second vehicle, the plaintiff commenced these proceedings against the JPJ as well as the police authorities at Kuala Muda, Kedah seeking the following declarations and relief:

(a) a declaration that the first defendant has no right or lawful authority to refuse issuance of a motor vehicle licence on the ground that the plaintiff has committed a traffic offence;

(b) a declaration that the first defendant's refusal of the plaintiff's application made on 14 October 1996 for the issuance of a motor vehicle licence (road tax) in respect of motor vehicle No WAP 5789 on the purported ground that the plaintiff had committed an alleged traffic offence in Kuala Muda on 25 May 1994 is null and void and of no legal effect;

(c) a declaration that the plaintiff is entitled to be issued with the motor vehicle licence even if he has committed an alleged traffic offence;

(d) a declaration that the first defendant cannot refuse issuance of a motor vehicle licence to a motorist on the ground of an alleged traffic offence committed;

(e) a declaration that the second defendant has no lawful authority to request the first defendant to deny or refuse issuance of motor vehicle licence on the ground that a motorist has committed a traffic offence;

(f) a declaration that the second defendant's request or notification to the first defendant that the plaintiff be blacklisted and denied or refused issuance of a motor vehicle licence to the plaintiff is null and void and of no legal effect;

(g) A declaration that the plaintiff is entitled to a motor vehicle licence in respect of motor car bearing registration No WAP 5789 upon application by the plaintiff;

(h) Damages against both defendants to be assessed by the senlor assistant registrar;

A The defendants deny that the plaintiff is entitled to the declarations he seeks and have given their own reasons for saying so.

The first defendant, the Director of the JPJ, Ipoh, has sworn an affidavit in which he explains that the plaintiff's application to renew the licence of his first vehicle was refused because the computer system at the JPJ Ipoh, B showed that the plaintiff had been blacklisted by the police for a traffic offence and when such information appears in the computers at the JPJ, a counter clerk cannot and is not authorized to process any application for motor vehicle licences without the approval of the director himself or a duly authorized officer in that behalf in the JPJ. The first defendant goes on to explain that if such a person could produce evidence that the traffic C summons had been settled, then the director or any other duly authorized officer could approve the issuance of a licence. The first defendant also stated that all the information contained in the police blacklist which appears in the JPJ computer is entered by the police themselves through a computer network controlled by the police from their headquarters at Bukit Aman. Hence, if any traffic summons has been settled or compounded, it is D the responsibility of the police to delete the information relating to such summons from the computer system; the JPJ Ipoh, is not authorized to delete any information that has been entered in the computer system by the police.

The first defendant went on to explain that in respect of the first vehicle, E as the plaintiff was able on 18 May 1996 to prove to an officer of JPJ that the Kuala Muda traffic summons had been settled by production of the Kuala Muda receipt, the plaintiff's application was immediately approved.

As regards the second vehicle, the first defendant explains that the plaintiff's application to renew his licence was rejected for the following F reasons: (a) the computer at JPJ Ipoh showed that as at 14 October 1996, the plaintiff had committed a traffic offence at Kuala Muda on 25 May 1994; and (b) the plaintiff did not on 14 October 1996 show to the first defendant or any officer on duty, the Kuala Muda receipt. In support of this statement, the first defendant exhibited an extract of a record book maintained by the JPJ of all persons who are on the police blacklist and who G come to the JPJ offices to renew their licences. The extract for 14 October 1996 does not show the plaintiff's name implying he did not go to the JPJ offices on that date. The first defendant goes on to state that without proof on that day that the Kuala Muda traffic summons had been settled, the plaintiff's licence for his second vehicle would not be renewed.

H The first defendant maintains that in doing what he and his department did, he has acted lawfully and in accordance with the provisions of s 17(1)(d) of the Road Transport Act 1987 ('the Act') which reads:

> 17 Director may refuse to issue motor vehicle licences in certain cases.
>
> (1) A licenced registrar shall not be required to grant any motor vehicle I licence for which application is made unless —
>
> (a) ...
>
> (b) ...
>
> (c) ...

(d) he is satisfied that the applicant has no outstanding matter or case with the Road Transport Department or the Police relating to any contravention of or offence against this Act or the Commercial Vehicles Licensing Board Act 1987.

(e) (Deleted).

(1A) (Deleted).

In so far as the second and third defendants are concerned, they deny that they requested the JPJ to deny or refuse issuance of a licence to the plaintiff and of having notified the JPJ of the plaintiff being on the police blacklist. The second and third defendants particularly point out that the first defendant has gone on affidavit to say that he (first defendant) acted on information contained in the JPJ's computer which in turn relied on information keyed in by police headquarters at Bukit Aman and not from instruction from Kedah.

Having stated the facts and before I set out the competing contentions of the parties on those facts, there is a matter that must be mentioned. Some 5 months after the filing of this action, the first defendant on 27 April 1997 renewed the licence of the plaintiff's second vehicle.

Mr Gurubachan Singh, counsel for the plaintiff submitted that notwithstanding that the licence for the second vehicle had been renewed, the plaintiff is still entitled to seek the declarations prayed for as the plaintiff need not have an existing or present cause of action; it is sufficient if the plaintiff had a cause of action on 24 December 1996 when the action was instituted, (see *Goverment of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 at p 16) and submits counsel, the court should make the declarations sought as there is no provision of law that compells a person who is summoned for a traffic offence to plead guilty thereto and therefore the use of s 17(1)(d) of the Act by the first defendant to refuse renewal of a licence until a traffic summons is settled, compells or intimidates a motorist into pleading guilty to the summons thereby denying to the motorist concerned his constitutional right to claim trial and defend himself as envisaged in art 5(3) of the Federal Constitution and to that extent, s 17(1)(d) is void as being ultra vires the Federal Constitution.

As a second string to his bow, so to speak, counsel submitted that if s 17(1)(d) of the Act does confer on the first defendant a discretion to refuse the issuance of a licence, then the first defendant has wrongfully and improperly exercised that discretion on the particular facts now known to the court.

Raja Rozela bte Raja Toran, Federal Counsel, who appeared for the first defendant, views the matter quite differently; it is her contention that as the first defendant had already granted to the plaintiff a licence for his second vehicle, this action should be struck out as firstly, the plaintiff no longer has a cause of action and in this counsel relies on the decision of the Supreme Court as delivered by Salleh Abas LP, in *Goverment of Malaysia v Lim Kit Siang*. Secondly, the declarations sought no longer serve any purpose as the court would be acting in vain in granting such declarations; the plaintiff will not be a lawful recipient of the declarations if granted, since

A he already possesses a licence for his second vehicle; in support, counsel relies on the case of *Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Haji Ibrahim & Ors* [1988] 3 MLJ 82. Thirdly, submits Federal Counsel, the plaintiff's claim if anything, has now become academic in nature and as such there would be no justification in the court making the declarations sought. In support, the case of *Menteri Hal Ehwal Dalam Negeri*
B *Malaysia & Ors v Karpal Singh* [1992] 1 MLJ 147 was cited.

In so far as the plaintiff's complaint on s 17(1)(d) of the Act is concerned, it is Federal Counsel's submission that that section clearly confers on the first defendant power to refuse a motor vehicle licence to an applicant in the circumstances mentioned in the section; and, in this case,
C the first defendant had acted properly and within his lawful authority as he (the first defendant) had relied on information supplied by the police in the JPJ computer relating to traffic offenders before refusing the licence. And, submits counsel, since the first defendant had no control over the information fed into the computer system by the police, and no authority to delete any information therein, the first defendant is not to be faulted for
D having refused to issue the plaintiff with a licence for his second vehicle.

In so far as the attacks levelled against s 17(1)(d) of the Act as being unconstitutional is concerned, Federal Counsel replied that such submission cannot be sustained for two reasons: firstly, art 5(3) of the Federal Constitution has no application in this case as that sub-article talks
E about the right of a person who has been arrested to be defended by a legal practitioner of his choice. No such thing has happened here. Secondly, to say that s 17(1)(d) of the Act forces motorists to plead guilty to a traffic summons is to put a wrong interpretation on the words found in the section. It is counsel's contention that it offends against a basic principle of statutory interpretation to go beyond the express, clear and unambiguous language of
F s 17(1)(d) and impute to them a meaning quite contrary to the plain language of the section as the plaintiff has now done. In support, Federal Counsel refers to the cases of *Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Haji Ibrahim & Ors* and *Chin Choy & Ors v Collector of Stamp Duties* [1979] 1 MLJ 69 (FC). It is Federal Counsel's submission that the plain and unambiguous words of s 17(1)(d) should be given effect
G to by the court and when this is done, it will be seen that the first defendant had power and authority to refuse the grant of a vehicle licence to the plaintiff in the particular circumstances of this case.

Encik Badlishah, federal counsel, who appeared for the second and third defendants submitted that there is absolutely no evidence that the
H second and third defendants requested the first defendant not to issue the licence applied for by the plaintiff and neither did they notify the first defendant of the Kuala Muda traffic summons. As regards the plaintiff's contention that s 17(1)(d) of the Act is ultra vires the Federal Constitution as being contrary to art 5(3) thereof, En Badishah submitted that art 5(3) is intended to safeguard the liberty of the individual and to protect against
I unlawful detention or arrest. However, that is not the case here and so art 5(3) can have no application to the facts of our case. In so far as the plaintiff seeks to impugne the provision of s 17(1)(d) of the Act, it is

counsel's submission that this court should decline to do so as it is not within the province of this court to adjudicate on the wisdom of such legislation, that being the prerogative of Parliament. In support, counsel refers to the case of the *Attorney General, Malaysia v Chiow Chiam Guan* [1983] 1 MLJ 51 at p 52 para 'A' left.

In my judgment, the fact that by the time this application came to be heard the plaintiff had already been granted a licence for this second vehicle would not prevent him from maintaining this action. The plaintiff clearly did have a cause of action when he filed this originating summons, and the case of *Tan Sri Haji Othman Saat v Mohamed bin Ismail* [1982] 2 MLJ 177 (FC) is authority for the proposition that it is not necessary for a plaintiff who seeks relief by way of declaratory judgement to show that he has a present cause of action; what he must show is that he is someone with such an interest in the subject matter of the action so as to justify his seeking relief. On the facts as disclosed in this originating summons, I see the plaintiff as a person, who, being the registered owner of a vehicle whose application for a road vehicle licence for that vehicle having been refused, has an interest in seeking the reliefs he does.

However, it does not follow that just because the plaintiff is able to maintain this action, he will be entitled to the declarations he seeks because even though the grant of declaratory relief has, is, and will continue to remain a useful remedy granted by the court in appropriate cases, yet it remains a discretionary remedy and to this end it would be appropriate here to repeat what was said by Hashim Yeop A Sani SCJ, about this discretion in the case of *Mohamed Noor bin Othman & Ors v Haji Mohamed Ismail bin Haji Ibrahim & Ors* [1988] 3 MLJ 82 at p 84 that:

> It is also an established principle consistently followed by our courts that the issuing of a declaration is discretionary. The power to issue a declaration should be exercised with circumspection with a proper sense of responsibility and ought not to be exercised unless the circumstances justify it.

Some four years later, the same learned judge delivered the decision of the Supreme Court in the case of *Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v Karpal Singh* [1992] 1 MLJ 147. In that case, Karpal Singh had been detained under the Internal Security Act 1960. The order of detention was then suspended whereafter Karpal Singh filed an originating summons seeking certain declarations relating to the validity of the detention order. By the time the originating summons came up for hearing, the detention order had been cancelled. At the commencement of the hearing Karpal Singh asked for costs but the learned senior federal counsel raised two preliminary objections, one of which was that the matter had become academic and therefore the originating summons should be struck out with no order as to costs. The learned judge overruled both objections and held that before he could exercise his discretion on costs he had to hear the merits of the application. On appeal, this is what Hashim Yeop A Sani CJ said at p 149 regarding the fact that the matter had become academic:

> As regards the first preliminary objection it is our view that the matter had indeed, by the time the originating summons came before the learned judge,

A become academic. There was no living issue before the learned judge... There was no longer any lawful recipient of any benefit of any declaration sought in the originating summons. The respondent had by then no real interest in the declaration ... .

Reverting to the facts of our case, it is to be noted that the plaintiff has not sought any declaration in respect of his first vehicle; this must be because the plaintiff recognised and accepted that upon the issuance of a licence to the first vehicle, there was no longer a live issue between him and the defendants for which a declaration could be sought. Likewise, in my view, by the time this originating summons had came up for hearing, the licence for the plaintiff's second vehicle had been issued with the result that there was no longer any living issue before the court and to that extent the declarations sought by the plaintiff had become academic. By the same token, the plaintiff having received a licence for this second vehicle, he could no longer be the recipient of any benefit of any of the declarations sought and this becomes evident when one looks at the declarations sought. The declarations in prayers (b) and (g) are the only two declarations directly concerning the second vehicle. At the hearing, counsel for the plaintiff abandoned prayer (g). With the issue of the licence, the issue raised in prayer (b), that is, the first defendant's refusal to issue the licence because of the alleged traffic offence at Kuala Muda, was no longer a live issue and had become academic. In so far as the declarations sought in prayers (a), (c), (d), (e) and (f) are concerned, which are to the effect that the first defendant cannot refuse the issuance of a licence even if a motorist commits a traffic offence or that the second and third defendants cannot request the first defendant to issue a licence on grounds that a motorist had committed a traffic offence; with the issuance of the licence to his second vehicle, the plaintiff could no longer be the recipient of any benefit of any of these declarations since the real purpose of obtaining these declarations are directed towards having a licence issued to his second vehicle — a fact already accomplished. In the circumstances above described, there is no justification in the court going further to adjudicate on the merits of the application.

In coming to the above findings, I have not overlooked the fact that the plaintiff has in his originating summons included a prayer for damages to be assessed. Since I have found no justification to consider the merits of the plaintiff's application, and since counsel indicated that damages were consequential to liability, the question of damages does not arise.

I accordingly refuse the declarations sought and dismiss the originating summons. There will be no order as to costs. I am not awarding costs against the plaintiff as he was compelled to bring these proceedings.

Action dismissed.

Reported by Jafisah Jaafar